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[ORIGINAL CIVIL JURISDICTION]

HUGGARD, C.J.

April 2, 1935.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF PROHIBITION AND IN THE MATTER OF THE SINGAPORE IMPROVEMENT ORDINANCE (1927).

[SINGAPORE ORIGINATING SUMMONSES Nos: 150, 151 and 152 of 1934].

Writ of Prohibition—Singapore Improvement Trust—Singapore Improvement Ordinance 1927 Part V.

In declaring a building insanitary under S. 57 of the Singapore Improvement Ordinance (1927) the Singapore Improvement Trust is performing a judicial function.

After such a declaration has been submitted to the Governor in Council under S. 59 of the Ordinance, the position of the Board is that of a party to the proceedings and the Board is no longer exercising anything in the nature of judicial functions. But there is still something remaining to be done by the Board arising out of the declaration namely the duty of appearing before the Governor in Council; and therefore in a proper case a writ of prohibition may issue to prohibit such further proceedings.

The statutory right of the Board to appear before the Governor in Council under S. 59 sub-S. (5) of the Ordinance must depend on the proper observance by the Board of the provisions of Ss. 57 and 58 and if in any case it can be shewn that the Board has failed to observe those provisions the statutory right ceases to exist and the Supreme Court may properly prohibit any attempt to exercise it.

The procedure to be followed by the Board in proceeding under S. 57 is clearly provided by Ss. 57 and 58 and if the Board has failed to observe that statutory procedure, prohibition will lie in respect of such failures.

The effect of S. 58 sub-s. (5) is to make it obligatory on the Board to furnish objectors with a full and complete statement of all the grounds on which the Board has acted and those grounds should indicate clearly the defects arising from the construction or condition of the building which in the opinion of the Board render or tend to render the building unfit for human habitation.

If the Board have power under S. 10 to proceed against a house or land under either of two parts of the Ordinance, the Board is entitled to elect which procedure it will adopt. There is nothing in S. 57 of the Ordinance which limits its application to any particular class of house, whether it stands alone or in a block of houses (so long as the house is used or is intended or is likely to be used as a dwelling place) but in considering whether or not a house is unfit for human habitation under that section the Board may only have regard to defects arising from the construction or condition of the house itself and may not take into consideration defects arising from its proximity to or contact with any neighbouring building.

Adjourned Originating Summons.

In this case the Singapore Improvement Trust took action under s. 57 of Part V of the Singapore Improvement Ordinance (as amended) against all the houses (94 in number) in a large area in the middle of Singapore Town, bounded by Victoria Street, Bugis Street, North Bridge Road and Rochore Road.

In the case of each house in this area the Board made a declaration that the building was insanitary.

Thereupon the Board duly advertised the fact that such declarations had been made and served notices upon the owners affected.

The majority of the owners affected objected in writing to such declarations and appeared on the hearing of the objections by the Board and adduced such evidence as they thought fit.

The Board in each case decided to submit the declarations to the Governor in Council and in fact did so. Thereafter three of the Objectors (who in fact were acting in co-operation with the other objectors) after giving notice to the Board each issued on Originating Summons praying for the issue of writs of prohibition against the Board to prohibit the Board from further proceeding with the reference to the Governor in Council in respect of the said declarations.

All three Originating Summonses were adjourned into open Court for argument and were heard together. The facts and arguments sufficiently appear from the Judgment of the Chief Justice, Sir Walter Huggard, K.C.

H. D. Mundell for Estate & Trust Agencies (1927) Ltd. the Applicants in Originating Summons No. 152 of 1934.

J. C. Cobbett for H. D. Mundell the Applicant in Originating Summons No. 152 of 1934.

C. H. Smith for Eu Tong Sen Ltd. the Applicants in Originating Summons No. 151 of 1934.

John Laycock and *F. A. Briggs* for the Singapore Improvement Trust. the Respondents in all three Originating Summonses.

Cur. Ad. Vult.

HUGGARD. C.J.—In these Originating Summonses application is made for the issue of writs of prohibition directed to the Singapore Improvement Trust to prohibit them from proceeding further in respect of a declaration made by the Trust to the effect that certain houses in Singapore were insanitary within the meaning of section 57 of the Singapore Improvement Ordinance, 1927.

The Singapore Improvement Ordinance, which is an Ordinance to provide for the improvement of the Town and Island of Singapore, came into force on the 1st July, 1927. By section 4 of the Ordinance a Board called the Singapore

Improvement Trust is created, and in that Board is vested the duty of carrying out the provisions of the Ordinance. The Ordinance goes on to provide the Board with various powers, but for the purposes of these applications it is only necessary to consider in detail some of the provisions of Part V of the Ordinance.

Part V relates to Insanitary Buildings, and section 57 provides as follows:—

> "Whenever it appears to the Board that within its administrative area any building which is used or is intended or is likely to be used as a dwelling place is of such a construction or is in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary."

Then section 58 provides that when a declaration has been made under section 57 the Board shall advertise the fact in certain newspapers and shall serve a notice on the owner or reputed owner of the building in respect of which the declaration has been made stating that if within one month such owner or reputed owner shall deliver an objection in writing thereto he shall be heard by the Board. This section further requires the Board to consider any objection which may be received, at a time and place of which the objector is to be informed in writing. Sub-section (4) entitles the objector to appear in person or by duly authorised agent and to adduce evidence, and sub-section (5) provides that the objector shall be furnished with a statement in writing of the grounds on which the Board made the declaration.

Then we come to section 59 which deals with the procedure which follows after the consideration of objections by the Board. The Board may revoke the declaration or may submit it to the Governor in Council for approval. If the declaration is submitted to the Governor in Council it must be accompanied by the reports, statements or matters upon which the Board acted, such objections as have been made, any evidence produced before the Board by the objector, and a schedule showing the way in which the Board has dealt with each objection. If any objection has been made and not withdrawn, the Governor in Council is required to inform the objector of a time and place at which he will be heard. At the hearing the Board may appear by one of its officers or by Counsel, and the objector may appear in person or by duly authorised agent. Each party may be allowed to adduce further evidence. After hearing such parties as may appear, the Governor in Council may make an order approving or revoking the declaration.

The consequences of the approval of a declaration are dealt with in sections 60 and 61. The order of the Governor in Council is published in the Gazette; a memorandum is presented by the Board to the Registrar of Deeds containing a complete list of all the lands affected by the order; the Registrar notes in the register against all such lands the fact that any such order has been made; and thereupon all leases and all rights of occupancy under any tenancy in respect of the building to which the order relates are forthwith determined without compensation. The Board is then empowered to require the owner or reputed owner of the building to which the order relates to demolish it within a given time. The owner so required may call upon the Board to acquire the site on which the building is erected, in which case the Board is required to demolish the building at its own cost and to pay to the owner compensation for the site but not for the building. If within the given time the owner fails to demolish the building or to require the Board to acquire the site, the Board is empowered to demolish the building at the cost of the owner. In every case in which a building is demolished by the Board the materials thereof are deemed to be the property of the Board and the owner is not entitled to any compensation therefor.

It is clear therefore from the provisions of section 61 that in no circumstances can an owner receive any compensation in respect of a building demolished as the result of a declaration under section 57.

Now the facts relevant to the present applications, and as appearing from the affidavits which have been filed, are as follows. In September and October, 1933, the acting Municipal Health Officer made reports on a number of houses in the area bounded by Victoria Street, Bugis Street, North Bridge Road and Rochore Road, and these reports were sent to the Improvement Trust. Each house was separately reported upon and each report was separately considered by the Board. Subsequently, on the 22nd November, 1933, the Board passed the following resolution:—

> "That under the powers conferred by section 57 of the Singapore Improvement Ordinance the Board resolves that the houses shown on plan "B" in the area edged "Blue" bounded by Victoria Street, Bugis Street, Rochore Road and North Bridge Road are hereby declared insanitary."

This resolution covered 94 houses, including the houses in respect of which the present applications are made. In December, 1933, the Board served notices on the various owners concerned, as required by section 58 (1) of the Ordinance, to the effect that if within one month they delivered

objections in writing they would be heard. Following the receipt of these notices the solicitors for the owners who are concerned in these applications wrote to the Trust intimating that their clients objected to the declaration and calling for a statement in writing of the grounds on which the Board had made the declaration. In due course the Trust replied forwarding copies of the relevant reports of the Municipal Health Officer and stating that the objections would be considered by the Board at a time and place of which the solicitors would be informed later.

On the 21st and 22nd February, 1934, the Board heard objections to the declaration, and by letter dated the 5th June, 1934, the legal representatives of the owners were informed by the Board that the declaration had been submitted to the Governor in Council in accordance with the provisions of section 59 of the Ordinance. On the following day notice was given to the Trust that application would be made for writs of prohibition against the Trust, and subsequently these three Originating Summonses were issued.

In each of these Summonses the Applicants ask for a writ of prohibition prohibiting the Trust from proceeding further in respect of the declaration in question on the following grounds:—

(a) That the document furnished to the applicants purporting to be a statement in writing of the grounds on which the declaration had been made was not a statement in writing of such grounds within the meaning of section 58 (5) of the Ordinance;

(b) That the Trust acted *ultra vires* in declaring the buildings in question to be insanitary, in that the declaration was based on factors extraneous to those which the Trust could legally take into consideration under section 57;

(c) That the declaration was not made *bona fide* or in proper exercise of the powers conferred by section 57, in that action taken under that section ought only to be employed in respect of houses individually unfit for human habitation, and ought not to be employed as a means of carrying out an improvement scheme under Part VI of the Ordinance.

I might say here that, in regard to the matters which I have to decide, the circumstances connected with each of the three applications before me appear to be identical. There is no distinguishing feature in any of them, and I therefore propose, with the concurrence of the various Counsel engaged, to deal with all three applications as one.

Now the first point that arises for consideration on these applications is in the nature of a preliminary point. It is whether, in the circumstances of the present case, and having regard particularly to the position of the Board in relation to this declaration, a writ of prohibition can properly issue at all. Normally, of course, a writ of prohibition is directed to a Court. In *Halsbury's* Laws of England, 2nd Edition, Vol. 9, at page 819, it is stated that:—

> "That writ of prohibition is a prerogative writ, issuing out of the High Court of Justice, and directed to an ecclesiastical or inferior temporal court, which forbids such court to continue proceedings therein in excess of jurisdiction or in contravention of the laws of the land."

But it is now well settled that such writs may also issue to bodies or functionaries which are not Courts in any ordinary sense, but which are exercising or have a duty to exercise functions of a judicial or quasi-judicial character. In *Rex* v. *Electricity Commissioners*, (1924) 1 K.B. at page 194, Bankes, L.J. quotes with approval the dictum of Brett, L.J. in *Reg.* v. *Local Government Board* (10 Q.B.D. at page 321) where he said:—

> "My view of the power of prohibition at the present day is that the Court should not be chary of exercising it, and that wherever the Legislature entrusts to any body of persons other than to the superior Courts the power of imposing an obligation on individuals, the Courts ought to exercise as widely as they can the power of controlling those bodies of persons if those persons admittedly attempt to exercise powers beyond the powers given to them by Act of Parliament."

And on the same page Bankes, L.J. quotes also the dictum of Fletcher Moulton, L.J. in *Rex* v. *Woodhouse* [(1906) 2 K.B. at page 535] which is as follows:—

> "Other instances could be given, but these suffice to show that the procedure of *certiorari* applies in many cases in which the body whose acts are criticized would not ordinarily be called a Court, nor would its acts be ordinarily termed 'judicial acts.' The true view of the limitation would seem to be that the term 'judicial act' is used in contrast with purely ministerial acts. To these latter the process of *certiorari* does not apply .....there must be the exercise of some right or duty to decide in order to provide scope for a writ of *certiorari* at common law."

Bankes L.J. points out that in that case Fletcher Moulton L.J. was dealing wth an application for a writ of *certiorari*, but he expresses the opinion

that the observations of the learned Lord Justice apply equally to prohibition. And in the same case (i.e. *Rex* v. *Electricity Commissioners*) at page 205 Atkin, L.J. says:—

> "Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

Now what is the position of the Board here in exercising its powers and carrying out its duties under Part V of the Ordinance in connection with the declaring of buildings to be insanitary?

First of all section 57, which is set out earlier in this Judgment, provides in effect that when it appears to the Board that a building used or intended to be used as a dwelling place is by reason of its construction or condition unfit for human habitation, the Board may declare such building to be insanitary. On behalf of the Applicants Mr. Mundell contends that this section confers on the Board a discretion which involves the exercise of judicial functions. Mr. Mundell had already advanced the same contention at the hearing of the objections by the Board on the 22nd February, 1934, and it would appear, very clearly in my opinion, from the notes of evidence and argument which were taken on that occasion, and which have been exhibited to affidavits in connection with these applications, that Mr. Roland Braddell who was then advising the Board accepted this contention, because he is reported as having interrupted Mr. Mundell's argument regarding section 57 by saying—"I will advise the Board that they have a judicial discretion". Mr. Laycock who now represents the Board does not appear to accept the accuracy of the notes of the argument before the Board and he says that what was admitted by Mr. Braddell was that on the hearing of objections the Board acted in a judicial capacity, but not at any prior stage. Whether that be right or not, Mr. Laycock's own contention is that in making the original declaration the Board was doing an administrative or ministerial act, and he points out that in making such declarations the Board proceeds *ex parte*. I cannot accept this contention. In my opinion the Board when exercising its powers under section 57, even though at that stage it does not hear the parties concerned, is performing a judicial function. Under the terms of the section the Board has to consider in each case and has to decide whether or not a particular building is used or is intended or is likely to be used as a dwelling place, and whether or not it is of such a construction or is in such a condition as to be unfit for human habitation. It has to consider each of these factors and come to a conclusion upon them before a declaration can properly be made. That the Board has a discretion in the matter is clear from the terms of the section itself where it says that—"The Board *may* .....declare such building to be insanitary", and also from the provisions of section 62 of the Ordinance which gives the Board an alternative method of dealing with insanitary buildings by providing that:—

> "Instead of declaring a building to be insanitary the Board, if it considers that such building is capable of being rendered fit for human habitation, may order the owner to carry out such works therein as will achieve that purpose.....".

The view I have taken on this point appears to me to find conclusive support in the case of *Hall* v. *Manchester Corporation* which went to the House of Lords and is reported in 113 L.T.R. at page 465. That case turned upon the construction of section 41 of the Manchester Corporation (Waterworks and Improvement) Act, 1867, the relevant portion of which provides that:—

> "In every case where it is certified to the corporation.....that any building or part of a building is unfit for human habitation, the corporation may.....declare the same is not fit for human habitation, and shall not, after a date.....to be specified, be inhabited.....".

and the section goes on to impose a penalty on anyone occupying the house after that date. At page 455 Lord Dunedin said:—

> "I think that the expression 'may' declare shows that there is imposed on the corporation a duty of consideration as to whether the facts bear out the allegation contained in the certificate. If the duty imposed was a purely ministerial duty I think the word would have been 'shall.' It is true that it is trite law that 'may' in a statute may be equivalent to 'shall.' But each case must go on its own circumstances, and in my view all considerations of common sense point to the view I have expressed.....I think the corporation must set itself to the task in a judicial spirit.. ..."

and at page 470 Lord Parker of Waddington said:—

> "The question then arises as to whether the power entrusted to the corporation is purely administrative or is a judicial power. On this point I have had considerable doubt, because there is no

provision in the Act for hearing any party interested, or for receiving evidence, nor is there any provision for an appeal. But inasmuch as an order of the council under the section entails a penalty on persons who disregard it, I think on the whole that the corporation's power is in the nature of a judicial power....."

Mr. Laycock relies on this particular passage in support of his contention that under the provisions of section 57 the functions of the Board are ministerial, presumably because Lord Parker's conclusion as to the nature of the Manchester Corporation's powers appears to have been based on the existence of a penalty. It is true that the local Ordinance prescribes nothing in the nature of a monetary penalty for continued occupation of a building after it has been declared to be insanitary, but the inevitable consequence of such a declaration, if it is not subsequently revoked, is that the building is demolished. This consequence can hardly be looked upon as other than a penalty. I regard Lord Parker's observations, therefore, as affording strong support to the contention of the Applicants that in exercising its functions under section 57 the Board is exercising functions of a judicial character.

In further support of the contrary contention Mr. Laycock cited the recent case of *Errington* v. *Minister of Health*, 51 T.L.R. 44, where it was held that when a clearance order to which no objection is raised by owners of property concerned comes before the Minister of Health for confirmation under the Housing Act, 1930, the Minister of Health acts as an administrative officer, but where objections are raised by owners of property in the area concerned the Minister though not a Judge, exercises quasi-judicial functions in coming to his decision. But if the provisions of the Housing Act, 1930, are examined, it will, I think, be clear that the decision does not assist in considering the present case. Under the provisions of the First Schedule to that Act, before a clearance order is submitted to the Minister for confirmation, the local authority is required by paragraph (8) to publish in one or more newspapers a notice stating the fact of such order having been made, and also to serve on every owner and occupier of any building included in the area to which the order relates a notice stating the effect of the order and that it is about to be submitted to the Minister for confirmation, and specifying the time within and the manner in which objections thereto can be made. It will be observed that the provisions of this paragraph are in substance identical with the provisions of section 58 (1) of the local Ordinance. Then paragraph (4) of the Schedule provides that:—

"If no objection is duly made by any of the persons upon whom notices are required to be served, or if all objections are withdrawn, the Minister may, if he thinks fit, confirm the order....."

The question at issue in that case was not, of course, as to the position of the local authority in making the clearance order; the question was as to the nature of the functions of the Minister when the order had been submitted to him. With due respect I find no difficulty in appreciating the reasons for the decision of the Court of Appeal that where no objection had been raised to the clearance order the act of the Minister in confirming it was a ministerial, and not a judicial or quasi-judicial act, and I think it is clear that the function of the Governor in Council under section 39 (3) would equally be a ministerial act—that sub-section being identical in substance with paragraph (4) of the First Schedule to the Housing Act, except that the word "shall" is used instead of "may." As I have already indicated, therefore, I do not find that *Errington's* case assists me in any way in determining the nature of the functions of the Board when making a declaration under section 57 of our Ordinance.

Since the conclusion of the arguments on these applications Mr. Laycock, with the consent of Counsel for the Applicants, has referred me to the still more recent case of *Ex parte Frost and others*, reported in 179 L.T.R. 44. That case, however, was similar to *Errington's* case, in that it was concerned with the powers and the nature of the functions of the Minister of Health when a clearance order had been submitted to him, and not with the nature of the functions of the local authority. The decision therefore does not appear to have any bearing on the question which I am now considering.

It seems to me that in view of the terms of section 57 the functions to be exercised by the Board under that section are clearly of a judicial character. The Board has been entrusted by the Legislature with the power of imposing obligations on individuals; it has to examine the circumstances of each case and come to a conclusion, on such evidence as may be placed before it, as to whether or not the building in question is by reason of its construction or condition unfit for human habitation; it has a discretion to exercise as to whether it will proceed under section 57 or section 62 or not at all, and in arriving at its conclusion it therefore must act judicially.

The question as to the position of the Board in performing its remaining functions under Part V of the Ordinance may be briefly disposed of. The second function of the Board arising out of these declarations is, in the event of objections being

received, the hearing of these objections. It is agreed, and it is of course perfectly clear, that in hearing objections and in arriving at a conclusion as to whether or not a declaration is to be revoked, the Board is exercising judicial or quasi-judicial functions.

The third function of the Board is, in the event of objections having been made and not withdrawn, to appear by its representative at the hearing of those objections by the Governor in Council. It seems clear that when this stage has been reached, the position of the Board is that of a party to the proceedings. At any rate, in appearing or being represented before the Governor in Council, the Board cannot be said to be exercising anything in the nature of judicial functions.

It follows from what I have said, and from the conclusions which I have expressed, that in my opinion a writ of prohibition may issue in proper cases against the Board in respect of declarations made by it under section 57 of the Ordinance. This, however, does not dispose of what I referred to earlier in this Judgment as being in the nature of a preliminary point. It is still necessary to consider whether, having regard to the position of the Board in relation to the declaration which is questioned in these Summonses, (or, in other words, having regard to the stage which the proceedings have now reached), a writ of prohibition could in any event issue against the Board in the present case, and I now proceed to examine the various arguments advanced by Mr. Laycock in support of his contention that in the circumstances here a writ does not lie.

The actual position is that the Board, having considered objections, has submitted the declaration to the Governor in Council under section 58 (1). The only remaining function, therefore, which the Board has to perform in regard to this declaration is to appear by its representative before the Governor in Council when the objections are being considered by him. In these circumstances Mr. Laycock argues that prohibition only lies in respect of a judicial or quasi-judicial act; that so far as the Board had any judicial or quasi-judicial functions to perform in connection with this declaration those functions have been performed and the Board is now *functus officio* so far as those functions are concerned; and therefore that prohibition will not lie. In support of his argument Mr. Laycock cited a number of cases, the first being the case of *Clifford and O'Sullivan*, 1921, 2 A.C. 570. In that case certain military courts had been established in Ireland under the order of the Commander-in-Chief. The appellants having been convicted by a military court on a charge of improperly carrying arms, and having been sentenced to death, applied for a writ of prohibition. The case went to the House of Lords and it was held that prohibition did not lie, firstly, because the officers constituting the military court did not claim to act as a judicial tribunal in any legal sense, and, secondly, because they were *functi officio*. Mr. Laycock also cited the case of *In re J. W. Poe*, 110 E.R., 942, which was a court-martial case, in which it was held that prohibition cannot issue to a court-martial after the sentence has been ratified by the King and carried into execution. The next case cited was *Chabot* v. *Viscount Morpeth*, 117 E.R. 528. In that case a dispute had arisen between the plaintiff and the Commissioners of Woods and Forests regarding the value of lands which the Commissioners had compulsorily acquired, and in accordance with the provisions of the relevant Act of Parliament the value was assessed by a jury before the sheriff of the county. The value having been duly assessed by the jury, and judgment having been given by the sheriff, the plaintiff, on the ground of misdirection by the sheriff, applied for prohibition to prohibit the sheriff and commissioners from entering and recording the verdict and judgment, and from further proceeding for the purpose of using, acting upon, or otherwise making them available. Prohibition was refused on the grounds, *inter alia*, that no excess of jurisdiction had been shown; that the recording of the verdict and judgment was not a condition precedent to their validity; and that the sheriff was *functus officio*. The case of *Broad* v. *Perkins*, 21 Q.B.D., 533, was also cited. It was held in that case by the Court of Appeal that the granting of a writ of prohibition to an inferior court that has exceeded its jurisdiction is discretionary, and in the circumstances of that case prohibition to the Mayor's Court, London, in a matter in which that court had exceeded its jurisdiction, was refused on an application made after judgment, but before execution.

Now there appears to me to be a clear distinction between each of the cases relied on by Mr. Laycock and the present case. In *Clifford and O'Sullivan's* case (*supra*) it was held in the first place that the military court was not a judicial tribunal in any sense, and this was necessarily fatal to the application for prohibition. At page 583 of the report Viscount Cave said:—

> "It is unnecessary to decide whether prohibition could in any case be granted against a body improperly setting itself up as a court with legal authority to try cases and pass judgments; but, however that may be, there is no precedent for the issue

> of the writ against a body which has no statutory or common law authority to do either, and which claims no such authority. In the present case the body which it is sought to prohibit, though called a military court, neither possesses nor claims any such authority.....it is plain that it is in law not a court or judicial tribunal of any kind."

Here the position is quite different inasmuch as the Board, under the authority of the Ordinance, is required to perform functions of a judicial or quasi-judicial nature, and therefore it is a judicial or quasi-judicial tribunal.

Then, in the second place, it was held in *Clifford and O'Sullivan's* case that the officers constituting the military court were *functi officio.* At page 584 of the report Viscount Cave said:—

> "A further difficulty is caused to the appellants by the fact that the officers constituting the so-called military court have long since completed their investigation and reported to the commanding officer so that nothing remains "to be done by them, and a writ of prohibition directed to them would be of no avail."

and the learned Lord cites *In re Poe* and *Chabot* v. *Lord Morpeth* (*supra*). On this point also the present case appears to me to be clearly distinguishable. It is true that the Board, having completed the exercise of its judicial or quasi-judicial functions, is *functus officio* so far as those functions are concerned. But the Board still exists and there still remains something to be done by the Board. It has to appear before the Governor-in-Council. The act of appearing before the Governor in Council is not, of course, a judicial act but in my view it is not necessary that it should be. I think it is correct to say that so long as anything remains to be done by a judicial or quasi-judicial tribunal which arises from the exercise of its judicial or quasi-judicial functions, the writ will lie against the tribunal. It is contended on behalf of the applicants that under the terms of the Ordinance the Board has a *duty* to appear before the Governor in Council at the hearing of objections. I do not think that Mr. Laycock contested this contention and in my opinion it is the correct view. Section 59 (5) says that the Board *may* appear but I think it is correct to say that, used in that connection, the word "may" must be interpreted to mean "shall". In *Julius* v. *Lord Bishop of Oxford* (5 A.C. at page 225) Lord Cairns quotes the observation of Mr. Justice Coleridge in *Reg.* v. *Tithe Commissioners* (14 Q.B. Reports 459) where the learned Judge said:—

> "The words undoubtedly are only empowering, but it has been so often decided as to have become an axiom, that in public statutes words only directory, permissory, or enabling, may have a compulsory force where the thing to be done is for the public benefit or in advancement of public justice."

This observation appears to me to be appropriate to the position of the Board in connection with the hearing of objections by the Governor in Council. In the present case, therefore, there remains something to be done by the Board, something which it has a duty to do, so that the position here is quite different from that in *Clifford and O'Sullivan's* case where the members of the tribunal had dispersed and there was nothing whatever remaining to be done.

Similarly, it seems to me, the present case is distinguishable from *In re Poe* (*supra*). There, as I have already said, the sentence of the court-martial had already been ratified and had been carried into execution, and the court-martial had ceased to exist. There was therefore nothing to prohibit and no one against whom the writ could have effectively issued.

Then in *Chabot* v. *Viscount Morpeth* (*supra*) prohibition was refused on the ground that there had been no excess of jurisdiction, so that the decision would not appear to have any application in a case where it can be shown that a tribunal has in fact exceeded its jurisdiction. A further reason for refusal in *Chabot's* case was that the sheriff and commissioners had no further duty to perform under the judgment and were therefore entirely *functi officio.* The present case is, consequently, clearly distinguishable.

As regards *Broad* v. *Perkins* (*supra*), so far as it affects the point now under consideration it seems to carry us no further than this: that even where a tribunal has exceeded its jurisdiction the grant or refusal of a writ of prohibition is discretionary and not of right and will depend on the circumstances of each case.

Mr. Laycock's argument is, as I have said, that prohibition will only lie to prohibit a judicial or quasi-judicial act. I do not think that any of the authorities upon which Mr. Laycock relies can be said to support that argument. The result of the authorities appears to me to be that a writ may properly issue against any judicial or quasi-judicial tribunal which has exceeded its powers or has contravened the law, so long as the tribunal has anything further to do in the matter. The writ of course issues *in respect of* the judicial or quasi-judicial act of the tribunal, but the act to be prohibited need not necessarily be an act of a judicial or quasi-judicial character: it may be an administrative or ministerial act. This view seems to find

support in a number of cases. In *Broad* v. *Perkins* to which I have just referred the application was made after judgment but before execution. The application was refused, but not on the ground that the Mayor's court was *functus officio* as regards its judicial functions, and no such argument appears to have been advanced. Then there is the important dictum of Wright, J. in *Re London Scottish Permanent Building Society* (63 L.J.Q.B. at page 113), namely, that "an application for prohibition is never too late so long as there is something left for it to operate upon." This dictum of Wright, J. was expressly approved of by Scrutton, L.J. in *Rex* v. *North* (1927, 1 K.B., at page 503), and in neither of those cases is there any suggestion that the "something left to be operated upon" must be a judicial act. Other authorities might be cited if necessary, but in my view it is quite clear that where a tribunal can be shown to have exceeded its powers or contravened the law, a writ may issue to prohibit further proceeding so long as there is any act or duty remaining to be done, whether that act or duty be of a judicial or administrative character. The point is whether there is anything left to prohibit. In the present case there is clearly something remaining to be done by the Board arising out of this declaration, namely, the duty of appearing before the Governor in Council.

Mr. Laycock further contends that under the provisions of section 59 of the Ordinance the Board has not only a possible duty but has a statutory *right* to appear before the Governor in Council, and that this Court has no power to prohibit the Board from exercising that statutory right. In my view the answer to this contention is that the right of the Board to appear before the Governor in Council must depend on the proper observance by the Board of the provisions of sections 57 and 58, and if in any case it can be shown that the Board has failed to observe those provisions the statutory right ceases to exist and this Court may properly prohibit any possible attempt to exercise it.

Then Mr. Laycock also argues that prohibition should not lie where there is an alternative remedy by way of appeal, and he suggests that in the present case the applicants have been provided with a method of appeal by being allowed to appear and present their objections before the Governor in Council. But I have found no authority which goes so far as to lay it down that where an alternative remedy by way of appeal exists, the jurisdiction of the Courts to grant a writ of prohibition is ousted. In *White* v. *Steele* (142 E.R. at page 1202) Willes, J. said:—

> "But it by no means follows that, because the misconstruction of an Act of Parliament.....may be corrected on appeal, it is not also a ground for prohibition....".

I think the correct view is that where it can be shown that the provisions of a statute have been contravened, the jurisdiction to grant a writ of prohibition still remains although an alternative remedy by way of appeal may exist.

Mr. Laycock's final argument on this point is that prohibition does not lie to correct an error of procedure. This argument is really directed only to the first ground on which a writ of prohibition is applied for, namely, that the document served on the applicants purporting to be a statement in writing of the grounds on which the declaration was made was not a statement in writing of such grounds within the meaning of section 58 of the Ordinance. It is, of course, no answer to these applications if it can be shown that the Board in making the declaration in the present case acted in excess of its jurisdiction. In support of his argument on this point Mr. Laycock referred to a number of cases:—

Martin v. *Mackonochie* (3 Q.B.D., 739)
Mackonochie v. *Lord Penzance* (6 A.C. 431)
In re London Scottish Permanent Building Society (*supra*).
Hooper v. *Hill* [(1894) 1 Q.B. 659].
Rex v. *Licensing Justices and Compensation Authority for the City of Chester* [(1914) 3 K.B. 349]. I do not think it necessary to deal in detail with each of these cases. It is sufficient to say that in my view they merely lay down that writs of prohibition will not lie to correct a mere error of procedure unless such procedure is regulated by statute or unless the error involves the doing of something which is contrary to the general law or is in excess of the jurisdiction of the tribunal (*vide* judgment of Charles, J. in the *London Scottish Permanent Building Society* case at page 114). In the present case the procedure to be followed by the Board is clearly prescribed by statute and if the Board has failed to observe that procedure prohibition will lie in respect of that failure.

The conclusion therefore at which I have arrived on what I have referred to as being in the nature of a preliminary point is that if it can be shown in the present case that the Board in making this declaration has acted *ultra vires*, or has contravened or failed to observe the provisions of the Ordinance which regulates its powers, then there is nothing in the circumstances of the case which would preclude this Court from granting a writ of prohibition.

And so we approach the consideration of the grounds upon which a writ is applied for,

but before coming to those grounds I desire to refer briefly to the arguments which were addressed to me on the Ordinance itself and as to how its provisions should be construed. The contention advanced on behalf of the Applicants is that inasmuch as the Ordinance is one which is designed to interfere with private rights and property and to impose burdens on the public, its provisions should be construed strictly against the Improvement Trust and liberally in favour of the public. In support of this view Mr. Mundell refers to certain passages from *Maxwell* on Interpretation of Statutes, 7th Edition. At page 245, for example, the learned author cites authority for the proposition that:—

> "Statutes which encroach on the rights of the subject, whether as regards person or property, are subject to a strict construction in the sense before explained. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights".

Mr. Laycock for the Trust does not agree that this is the only canon of construction which has to be taken into consideration here, and he urges, that in construing this Ordinance one must bear in mind the object with which it was enacted (namely, the improvement of the Town and Island of Singapore), and, as stated in *Maxwell* at page 59:—

> "make such construction of the statute as shall suppress the mischief and advance the remedy."

Now it is clear from an examination of the Ordinance, and particularly of Part V, that the Legislature has conferred on the Improvement Trust very drastic powers of interference with private rights of property, and it appears to me that, speaking generally, if there is any doubt as to the precise meaning of any of its provisions, those provisions should be construed strictly against the Trust. In the case of *In re Bowman* [(1932) 2 K.B. 621] Swift, J. had to consider the provisions of the Housing Act, 1930, a statute very much in *pari materia* with our Improvement Ordinance, and at page 633 the learned Judge observes:—

> "When an owner of property against whom an order has been made under the Act comes into this Court and complains that there has been some irregularity in the proceedings and that he is not liable to have his property taken away, it is right, I think, that his case should be entertained sympathetically and that a statute under which he is being deprived of his rights to property should be construed strictly against the local authority and favourably towards the interest of the applicant, inasmuch as he for the benefit of the community is undoubtedly suffering a substantial loss, which in my view must not be inflicted upon him unless it is quite clear that Parliament has intended that it shall".

While not losing sight of the fundamental rule that the language of a statute must be construed according to its natural and ordinary meaning, it appears to me that, should any doubt arise as to the precise meaning of any of the provisions of the Improvement Ordinance, the above observation is singularly appropriate and indicates correctly the manner in which such an enactment as this should be construed.

I now come to consider the grounds upon which prohibition is applied for in these cases, but I desire to make it clear at the outset that in considering these applications I have no concern with the question whether or not these houses were in fact unfit for human habitation. That is a question for the Board to decide upon proper considerations, subject only to the overriding authority of the Governor in Council; the decision on that question of fact, assuming it to have been arrived at on proper considerations, cannot be made the subject of an application for a writ of prohibition. What I am concerned with here is whether, in declaring the houses in question to be unfit for human habitation within the meaning of section 57, the Board has duly observed the provisions and requirements of the Ordinance in this connection.

There is one other point which I might mention here, namely, that all the houses with which we are concerned in these applications are admittedly used as dwelling houses.

I propose to consider the grounds upon which prohibition is applied for in these cases in the order in which those grounds were dealt with in the course of the arguments.

Ground (c) may be briefly re-stated as follows:—

> That the declaration was not made *bona fide* or in proper exercise of the powers conferred by section 57, in that action under that section ought only to be employed in respect of a house individually unfit for human habitation.

A number of points arise for consideration under this ground. The first point is, though it was not pressed in argument, that the action of the Board here was *mala fide*, the suggestion being that the Board should have proceeded in regard to these houses by way of an improvement scheme under Part VI of the Ordinance, which would have involved the payment of compensation to owners whose buildings were demolished, whereas instead the Board had

wrongfully attempted to make use of its powers under Part V in order to avoid paying compensation in respect of demolished buildings. On this point I am not concerned with the motives or reasons of the Board for electing to proceed under Part V. If the motive was economy then I can only say that in my opinion, so long as the Board was acting within its powers, that was a perfectly legitimate motive. If it was within the power of the Board to proceed in regard to these houses either under Part V or Part VI of the Ordinance, the Board was in my opinion clearly entitled to elect which procedure it would adopt. A similar point was raised in *Hall* v. *Manchester Corporation* and in dealing with it in the Court of Appeal (7ii L.T. at page 188) Channell, J. said:—

> " the mere fact that having got this power, and having got other powers besides, they elect to exercise this power merely because under this power if they only close this house, and do not demolish it, they do not have to pay compensation, that is perfectly legitimate....".

In the present case I see no reason to suspect that the action of the Board in proceeding under Part V was other than *bona fide* and in the genuine belief that, in so proceeding, it was acting within the powers conferred by that Part. Whether the Board was correct in that belief is, of course, another matter which I shall deal with later.

The next point arising under ground (c) is Mr. Mundell's contention that section 57 cannot be applied to a house forming part of a block of houses. He argued that by reason of the considerations upon which alone a building can be declared insanitary, section 57 can only apply to the case of a building standing by itself. Mr. Mundell admitted that the section might apply to a semi-detached house but he maintained that a house in a block of houses stands on a different plane I cannot see any sufficient reason for limiting the application of section 57 to buildings standing alone or even to semi-detached buildings. There is certainly nothing in the Ordinance, apart from the provisions of section 57 itself, which would suggest such a restricted application; and when one looks at section 57 it seems clear that so long as its application is confined to a building used, or intended or likely to be used, as a dwelling place, and so long as the Board confines itself to the considerations prescribed by the section, there is no reason why a building forming one of a block of houses should not be dealt with under the section. In support of his argument on this point Mr. Mundell relied on the judgment of a former Chief Justice, Sir John Bucknill, in the unreported local case of *Nunes* v. *Song Kee Chuan* (Singapore Magistrate's Appeal No. 36 of 1916). But the decision in that case appears to me to go no further than to hold that it was not open to the Municipality to deal with a house under section 225 of the Municipal Ordinance, 1913, by reason of defects arising from its proximity to one or more other houses, and I do not read the judgment of the learned Chief Justice as laying it down that in no circumstances could section 225 of the Municipal Ordinance be applied to a house forming one of a block of houses. I see no sufficient reason, therefore, for excluding a building from the purview of section 57 merely because it happens to stand in a block.

A further contention of the Applicants' under ground (c) is that the Board did not consider or deal with each of these houses *individually*. I think it may be taken that all parties here are agreed that in exercising its powers under section 57 it is the duty of the Board to consider each house separately, and in my opinion that is clearly the correct view. In the present case, however, each of the houses with which we are concerned forms part of a large block of 94 houses and the allegation on behalf of the applicants is that the Board, in making the declaration now complained of, dealt with the houses as one whole block and not separately. In support of this contention the Applicants rely on the affidavit of Mr. Bartley, the Chairman of the Board, and it is said that, while it is clear that after hearing the objections and before finally deciding to submit the declaration to the Governor in Council the Board *did* consider each house individually, it is equally clear that at the time the original declaration was made the Board did *not* consider the houses individually. I do not think that Mr. Bartley's affidavit supports this contention. In paragraph 3 of his affidavit he says—and naturally I accept it as correct—that each house was separately reported on by the Municipal Health Officer and that each report was separately considered by the Board before the declaration was made. Later in the same paragraph he says:—

> " Although the wording of the resolution relates to all the houses, each house was considered separately and found to be insanitary separately before the formal resolution was passed."

It also appears from Mr. Bartley's affidavits that the Board, before passing the formal resolution, had visited each of the 94 houses in the area.

In face of this—and Mr. Bartley was not cross-examined on his affidavits—I find it impossible to accept the contention that the Board, before making the original declaration, did not give separate consideration to each of

the houses concerned. It is true, as Mr. Bartley admits, that only one declaration was made in respect of all the 94 houses, but it may be that in view of the decision in *Flight* v. *The Vestry of St. George the Martyr, Southwark* (25 L.T.N.S., 24) it is permissible for the Board to make one declaration in respect of a number of houses. No objection is taken by the Applicants on this ground and I do not desire to express any opinion upon it. But I am satisfied on the evidence before me that the Board did in fact consider each individual house before making the declaration.

But Mr. Mundell contends that in another sense the Board failed to consider each house individually because, as he alleges, the Board in making the declaration took into consideration not only defects arising in each individual house but also defects arising from the proximity of each house to other houses in the block. This raises the question whether, in exercising its powers under section 57, the Board is entitled to consider defects in a building which arise from or are contributed to by the proximity of neighbouring buildings, or whether the Board may only consider defects arising from the structure or condition of the building itself.

It is, of course, clear from section 57 that that section applies only to a building which is of such a construction or is in such a condition as to be unfit for human habitation. How then should the expressions "of such a construction" and "in such condition" be construed? I have no hesitation in holding that they must be construed as relating to the construction and condition of the building itself. This view appears to me to be supported by ample authority. In the first place there is the decision of this Court in the unreported case of *Nunes* v. *Song Kee Chuan*, to which I have already referred. That was a case under the provisions of the Municipal Ordinance, 1913, which *inter alia* conferred on the Commissioners certain powers relating to the abatement of nuisances. Among the types of nuisances liable to be dealt with summarily under section 225 of the Ordinance was :—

> "any premises or part thereof of such a construction or in such a state as to be a nuisance or injurious or dangerous to health."

In the case referred to the Commissioners had taken action in regard to a house forming one of a large block of houses and it was clear that the defects complained of were not—or at any rate not entirely—due to the construction or state of the house itself. The case was considered on appeal by a Court of three Judges presided over by the then Chief Justice, Sir John Bucknill, who appears to have delivered the judgment of the Court allowing the appeal. The following are extracts from that judgment :—

> "Whereas in this case the position is that owing to structural defects, a house dependent upon and connected with other houses of similarly faulty character is regarded as unfit for human habitation, and is on that account irremediably defective, it does not appear to me that it is open to the Municipality to attempt to deal with it separately and individually under the provisions of that part of the Ordinance which relates to the abatement of nuisances.
>
> * * * * * *
>
> But if a house is dependent for its defects upon one or more other houses, and the irremediably faulty circumstances of its structure are interwoven with the presence, and I might add, of the also faulty construction of those other houses, it appears to me that to deal with such cases the Municipality must perforce adopt one of those other courses which I have indicated above.
>
> The reason is this: It is not really possible to disassociate the irremediably defective structure of the one house from the composite structure of the block or of the other house or houses; the fault and the nuisance do not lie alone with the one house, but conjointly with the block or other house or houses.
>
> To attempt to deal with one alone, or with each singly, is to endeavour to place upon each the burden, not only of its own defects, but of the combined defects of and occasioned by the presence of the other adjacent houses."

The Applicants here also rely on the decision in the *Queen* v. *Parlby and others*, 22 Q.B.D., 520, which turned on the construction of section 91 of the Public Health Act, 1875—a section very similar in terms to section 225 of the Municipal Ordinance, 1913. In delivering the judgment of the Court in that case Wills, J. said at page 525 :—

> "It is clear that the expression 'premises in such a state as to be a nuisance' has not the wide application claimed for it by the respondents, who say that it is answered by any premises on which a nuisance exists. If that were so the enumeration of, at all events, the several kinds of nuisance specified under heads 2, 3, 4 and 6, would be unnecessary; we do not attempt to define every class of case to which the first head applies, but we think it is confined to cases in which the premises themselves are decayed, dilapi-

dated, dirty, or out of order, as, for instance, where houses have been inhabited by tenants whose habits and ways of life have rendered them filthy or impregnated with disease, or where foul matter has been allowed to soak into walls or floors, or where they are so dilapidated as to be a source of danger to life and limb."

This passage from the Judgment of Wills J. was quoted with approval by Lord Hewart, C.J., in *Warman* v. *Tibbotts*, 125 L.T. at page 479.

Mr. Laycock sought to distinguish these cases (*Nunes* v. *Song Kee Chuan* and *The Queen* v. *Parlby*) on the ground that the Improvement Ordinance has conferred on the Trust wider powers for the purpose of dealing with insanitary dwellings than were possessed by the Commissioners under the Municipal Ordinance, 1913, or by local authorities under the Public Health Act, in regard to the abatement of nuisances. Mr. Laycock's argument, as I understand it, is that because of the existence of those wider powers one must give to the expressions "of such a construction" and "in such a condition" as used in the Improvement Ordinance a wider interpretation than that placed upon similar expressions appearing in section 225 of the Municipal Ordinance and in section 91 of the Public Health Act. I am unable to take that view. The expressions "of such a construction" and "in such a state (or condition)" have been judicially interpreted, and I cannot see any sufficient reason for thinking that the local Legislature, in continuing to use those expressions, intended that they should bear any different interpretation from that which had been already judicially placed upon them. If the Legislature had had any such intention it would have been a simple matter to express it.

Then, in further support of the contention that in dealing with a building under section 57 the Board must confine itself to the consideration of defects arising from the construction or condition of the building itself, the Applicants rely on certain passages in the judgments in *Hall* v. *Corporation of Manchester* to which I have already referred in other connections. That was a case under section 41 of the Manchester Corporation (Waterworks and Improvement) Act, 1867, the material portion of which reads as follows :—

"In any case, when it is certified to the Corporation by an inspector of nuisances, or by any two medical practitioners, that any building or part of a building is unfit for human habitation, the corporation may, by their order affixed conspicuously on such building or part of the building, declare the same is not fit for human habitation and shall not after a date therein to be specified be inhabited, ..."

It will be observed that under that section the powers of the Corporation were not in any way restricted by reference to the construction or condition of the building; all that was necessary to enable the Corporation to exercise its powers was a certificate that a particular building was unfit for human habitation. Acting under this section the Corporation declared three houses in Manchester to be unfit for human habitation, whereupon the owner of the houses issued a writ in the Palatine Court of the County of Lancaster claiming an injunction to restrain the Corporation from posting notices on the houses in accordance with section 41. The Vice-Chancellor granted an injunction on the ground that the powers conferred under section 41 could only be enforced in the case of a house unfit for human habitation by reason of some cause within the house itself and not by reason of contact with or proximity to other buildings. The Court of Appeal reversed the decision of the Vice-Chancellor, holding that upon the true construction of section 41 the powers under the Act were enforceable in the case of a house unfit for human habitation for any reason, whether due to the physical condition of the building or to external causes, and that it was therefore competent to the Corporation to make the order and affix the notices. The decision of the Court of Appeal was affirmed in the House of Lords. It is clear, however, from the judgments in both the Court of Appeal and the House of Lords that the decision turned on the very general terms of section 41 and the absence therefrom of any limiting expressions such as references to the construction or condition of the building. For example, in the Court of Appeal (iii L.T. at page 186) Buckley, L.J. said :—

"The awkward question for decision is this. Assume that the building or part of a building is not in itself, in any way personal to the building, unfit—that is to say, that its walls are sound, that its drainage is good, that the wall paper has not been attacked by microbes of some disease that has been in them, or that there is anything affecting the structure. Assume that there is nothing of that sort, but that the building is unfit because of some extraneous circumstances, such as that for instance the backyard is so small that the house is not sufficiently ventilated, as is supposed to be the case here. Is that within the section ? I have not got the words 'is in itself unfit' which are to be found in certain other Acts of Parlia-

ment. I have not got the words 'in such a state or condition' which would refer me to the structure. I have got perfectly general words 'any building or part of a building is unfit'..... I can only say that I do not see my way to differ from the Master of the Rolls, having regard to the arguments I have heard, that those are general words, and that being so I suppose I must give effect to them as general words."

The judgment of Buckley, L.J. was approved in the House of Lords (113 L.T., page 465), all the learned Lords holding that having regard to the general terms of section 41 of the Act a declaration could properly be made if the building was *for any reason* unfit for human habitation. At page 469 Lord Atkinson said :—

"What is the kind of unfitness for human habitation contemplated by this section ? In my view it is impossible to confine the words of the section to an unfitness for human habitation due to structural defects in a house itself, or to defective internal physical conditions in a house itself. I think those words include an unfitness due to external causes, such as want of ventilation, noxious effluvia, etc."

And Lord Sumner said at page 471:—

"There is nothing to confine the unfitness for habitation to unfitness due to something in the building itself, and I do not see why we should supply this."

I think, therefore, from the observations of the learned Judges both in the Court of Appeal and in the House of Lords, that it may safely be assumed that if section 41 of the Manchester Act had contained, as our section 57 contains, words pointing to the construction or condition of the building as grounds for making a declaration of unfitness, the decision would have been a different one, and that it would have been held, as the Vice-Chancellor had held in the Court of first instance, that the section could only be enforced in the case of a house unfit for human habitation by reason of some cause within the house itself.

Then it appears to me that still further support to the view that our section 57 applies only to a building unfit in itself is to be found in the definition of the term "obstructive building" in section 3 of the Improvement Ordinance. "Obstructive building" is defined as :—

"a building which, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings....."

it causes certain effects; and when we turn to section 66 we find that one of the objects for which the Board may prepare an improvement scheme is the demolition of obstructive buildings. Now it seems quite clear that an obstructive building as so defined is an entirely different class of building from that to which section 57 is intended to apply, and when we find that an obstructive building is one which is *not in itself* unfit for human habitation but is objectionable by reason of its proximity to or contact with other buildings, then I think it is a reasonable inference that the Legislature intended section 57 to apply to a building which is *in itself* unfit, without regard to defects arising from its proximity to or contact with other buildings.

Indeed it would appear from paragraph 11 of Mr. Bartley's affidavit that this is the interpretation which the Board itself places upon section 57, for in that paragraph Mr. Bartley says :—

"Prior to such inspection the members of the Board were advised that they should make up their minds with regard to each house without reference to the block generally or to the individual house in conjunction with other houses."

If I may say so, I think that the advice given to the Board was perfectly correct, and I should not have considered it necessary to deal with this point at such length were it not for the fact that a considerable part of Mr. Laycock's able argument was devoted to contending that the expressions "of such a construction" and "in such a condition" in section 57 should be given a wider interpretation than was attributed to those, or similar, expressions in the cases to which I have referred.

My conclusion therefore on ground (c) of the Originating Summonses is that there is nothing in section 57 which limits its application to any particular class of house, whether it stands alone or in a block of houses (so long, of course, as the house is used or is intended or is likely to be used as a dwelling place), but in considering whether or not a house is unfit for human habitation under that section the Board may only have regard to defects arising from the construction or condition of the house itself, and may not take into consideration defects arising from its proximity to or contact with a neighbouring building or buildings.

It is now necessary to consider whether, in making the declaration in the present cases, the Board did confine itself to the consideration of defects arising from the construction or condition of the individual houses concerned; and this brings me to ground (b) of the Originating Summonses which, briefly re-stated, is as follows :—

"That the Trust acted *ultra vires* in that the declaration was based on facts

extraneous to those which the Trust could legally take into consideration under section 57."

I have pointed out earlier in this Judgment that under section 58 (5) an objector is entitled to be supplied with a statement in writing of the grounds on which the Board made the declaration and that when the various objectors in the present cases called for this statement in writing they were furnished with copies of the relevant reports of the Municipal Health Officer. Nothing else in the way of "grounds" was supplied to the objectors. It is necessary, therefore, to consider these reports for the purpose of arriving at a conclusion as to whether the Board, in making the declaration, took into consideration facts which under section 57 they were not legally entitled to consider; in other words, did the Board take into consideration defects which did not arise from the construction or condition of the individual buildings themselves?

The reports of the Municipal Health Officer in regard to the houses with which we are concerned in these three applications are not in precisely similar terms, but in substance they appear to me to be the same. At any rate the objections which have been taken by the Applicants apply equally to them all. I therefore set out only the report on No. 543 North Bridge Road to which Originating Summons No. 150 of 1934 relates. The report is as follows:—

"1. This is a two storeyed brick and tile building, back to back with Nos. 59 and 60 Malabar Street.
2. It is 13 feet in width and 135 feet in depth.
3. It has two airwells adjoining a centre party wall of dimensions 12 by 8 feet. There is also an open area of dimensions 14½ feet by 10 feet.
4. At the rear of the building a brick latrine, kitchen and bathroom are situated, a corrugated iron bathroom is situated near the airwell on the first floor.
5. The ceiling of the first floor front is 10 feet in length, above which there is an attic under the roof.
6. The light is good only in that portion of the building which faces North Bridge Road.
7. Ventilation is bad, there being no through current of air and no possibility of obtaining it.
8. Drainage is through the house by means of a loose plank covered drain.
9. Refuse and nightsoil have to be carried through the house for disposal.
10. It is impossible for a water carriage system to be installed."

For convenience of reference I have numbered the various paragraphs of this report.

The contention of the Applicants is that, when this report is examined, most if not all of the alleged defects arise either from the proximity of other houses or from the fact that they do not comply with the requirements of the Municipal By-laws in regard to new houses. In my opinion this contention is well-founded. With the possible exceptions of paragraphs 6 and 7 I can find nothing in this report which points to any structural defects in the house itself, or to such defective physical conditions existing in the house, as would render it unfit for human habitation. The first five paragraphs of the report appear to me clearly to point to the fact that, in the particulars mentioned, the house does not comply with modern requirements or standards, but that fact *in itself* is, in my opinion, no ground for declaring the house unfit for human habitation. As Lord Dunedin said in *Hall* v. *Manchester Corporation* (113 L.T. at page 468):—

"'Unfit for human habitation' is a very strong expression and vastly different from 'not up to modern or model requirements.'"

How can it be suggested, for instance, that by reason of the fact that "the house is 13 feet in width and 135 feet in depth" (paragraph 2 above), or of the fact that "the ceiling of the first floor is 10 feet in height, above which there is an attic under the roof" (paragraph 5 above), the house is of such a construction or in such a condition as to be unfit for human habitation? Then paragraphs 6 and 7 of the report deal with light and ventilation. Light and ventilation are, of course, matters which may affect the fitness or unfitness of a house for human habitation, but from the descriptions of the defects in these two paragraphs it seems obvious that even these defects arise from the proximity of another house or other houses and not from anything in the house itself. Then paragraphs 8, 9 and 10 relate to drainage, refuse removal, and the impossibility of installing a modern sewage system. Here again the objections appear to me to arise from the proximity of another house or other houses, the result being that it is not possible to provide for the disposal of sewage by more modern methods. Such objections would no longer exist if the adjacent house or houses could be removed, and therefore, in my opinion, the objections cannot properly be said to arise from the construction or condition of the house itself.

Mr. Laycock argues that the various paragraphs of the report do relate to matters of construction. It is true, of course, that in a sense they do, but they are not matters which go to show that the house to which they relate is of such a construction as to be unfit for human habitation. There may be many architectural features in a house which may be objectionable but unless they are features which render, or tend to render, the house unfit for human habitation they may not, in my opinion, be taken into consideration by the Board under section 57. From the beginning to the end of the Health Officer's reports I can find nothing to suggest that the houses to which they relate are [if I may borrow expressions used by Wills, J. in *The Queen* v. *Parlby* (*supra*)] decayed or filthy or impregnated with disease or so dilapidated as to be a source of danger to life and limb. I do not suggest that these are the only grounds on which a house might be dealt with under section 57; I merely mention them as types of the grounds upon which a house might properly be declared unfit for habitation. I am satisfied therefore that in making this declaration the Board took into consideration alleged defects arising from the proximity of other houses and from non-compliance with Municipal By-laws, matters which in my opinion are outside the scope of section 57.

But Mr. Laycock argues that in this case the Board has made certain findings of fact on a matter within its jurisdiction, and that even if those findings are wrong this Court is precluded from interfering by way of prohibition, the only authority entitled to question those findings being the Governor in Council. In support of this argument Mr. Laycock cited the following cases:—

> *Brown* v. *Cocking*, 3 Q.B.D. 672; *The Queen* v. *Commissioners of Income Tax*, 21 Q.B.D., 313; *Rex* v. *Commissioners of Taxes*, (1901) 2 K.B., 879; *Rex* v. *Bloomsbury Income Tax Commissioners*, (1915) 3 K.B., 768:

and he relies particularly on the following observation of Lord Esher, M.R., in *The Queen* v. *Commissioners of Income Tax* (*supra*, at page 319), which was quoted with approval by Lord Reading in *Rex* v. *Bloomsbury Income Tax Commissioners* (*supra*, at page 782). Lord Esher said:—

> "When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

Now applying these principles to the present case Mr. Laycock says that the Board has been given jurisdiction to determine the facts, including the existence of the facts upon which the exercise of the Board's further jurisdiction depends; that the Board has determined all those facts; and that even if the Board has determined them wrongly prohibition will not lie. But in my opinion Mr. Laycock's argument on this point could only hold good if, under section 57, the Board had been given an unrestricted jurisdiction to determine the facts. The Board has not been given that unrestricted jurisdiction; on the contrary the Legislature has expressly laid it down that, in deciding whether or not a building is unfit for human habitation, the Board may only consider facts arising from the construction or condition of the building. If, therefore, in any case the Board bases its decision on facts extraneous to those which the Legislature has permitted to be considered, the Board will have acted in excess of the jurisdiction conferred

upon it, and any such excess of jurisdiction may properly be questioned in this Court.

My conclusion, therefore, on ground (b) of the Originating Summonses is that in the present case the Board in declaring the buildings in question insanitary took into consideration facts extraneous to those which it was entitled to consider, and that the action of the Board was consequently *ultra vires*.

This conclusion, when taken in conjunction with the conclusions arrived at on the points dealt with at earlier stages of this Judgment, is sufficient to entitle the Applicants to the writ of prohibition which they ask for, but I think it right to express an opinion also, as briefly as possible, upon the remaining ground set forth in the Originating Summonses.

This is ground (a) which alleges that the document served on the Applicants purporting to be the statement in writing of the grounds on which the Board made this declaration was not a statement in writing of such grounds within the meaning of section 58 (5) of the Ordinance.

Section 58 (5) provides that objectors shall be furnished with a statement in writing of the grounds on which the Board made the declaration. In my opinion the effect of this sub-section is to make it obligatory on the Board to furnish objectors with a full and complete statement of all the grounds upon which the Board has acted, and those grounds should indicate clearly the defects arising from the construction or condition of the building which, in the opinion of the Board, render or tend to render the building unfit for human habitation. It is clearly necessary that objectors should know exactly the grounds upon which their buildings have been condemned so that they may adequately present their objections before the Board, and subsequently, if necessary, before the Governor in Council. I do not agree with the view put forward in paragraph 6 of Mr. Bartley's affidavit that the provisions of section 58 (5) are designed only to "facilitate" the consideration of objections. In my view the object of the sub-section is to enable objectors to know precisely what case they have to meet; and therefore, applying the principles of construction to which I have referred earlier in this Judgment, I consider that the interpretation which I have placed upon that sub-section is a reasonable and proper one.

Now, as I have already mentioned, the statements in writing which were furnished to the Applicants here were copies of the relevant reports of the Municipal Health Officer.

Can these reports be regarded as full and complete statements of the grounds upon which the Board acted? Mr. Laycock says that they do represent all the grounds plus a little descriptive matter. There may be no serious objection to the inclusion of descriptive matter, provided it is clear what parts of the statement are descriptive and what parts represent actual grounds, but in this case I think that the Applicants are correct in contending that one is left to guess as to what parts of these reports are intended to be descriptive and what parts are supposed to represent grounds. As to whether the reports contain *all* the grounds upon which the Board acted, I find it difficult to accept Mr. Laycock's statement in view of what Mr. Bartley, the Chairman of the Board, says in his affidavits, In paragraphs 4 of each of his affidavits Mr. Bartley says:—

> "I say that the grounds on which the Board declared the said house and premises to be insanitary were not confined to consideration of the report of the Acting Municipal Health Officer.....
> .....
>
> In addition thereto the Board had visited the said premises and had personal knowledge and experience of the condition thereof. As a result of the reports of Dr. Dawson and of the knowledge and information available to the Board, it appeared to the Board that such premises were in such condition as to be unfit for human habitation."

This appears to me to be a definite statement that the grounds upon which the Board made the declaration were not confined to what appeared in the Municipal Health Officer's reports, and it necessarily follows from this that the documents furnished to the respective objectors were not full and complete statements of the grounds upon which the Board had acted. Mr. Laycock suggests that when Mr. Bartley speaks of additional grounds he really means to refer to additional ocular evidence resulting from the visit of the Board to the houses in question; but if the Board, in making the declaration subsequently, was influenced by defects observed on the occasion of that visit, particulars of those defects should in my view have been communicated to the objectors. As I have said, the objectors were in my opinion entitled to a *full and complete* statement of the grounds on which the Board acted, and I do not think that they got such a statement.

Then, as to whether the "grounds" furnished to the objectors indicated clearly the defects arising from the construction or condition of these buildings which, in the opinion of the Board, rendered or tended to render them unfit for habitation, I have already expressed the view, in dealing with ground (b), that they did not.

I am of opinion therefore that the documents furnished to the respective Applicants here did

not comply with the requirements of section 58 (5) of the Ordinance.

A further point, however, is taken by Mr. Bartley in his affidavits, and is argued by Mr. Laycock, namely, that at the hearing of the objections by the Board no objection was raised by the Applicants regarding any alleged insufficiency in the statement of grounds, and that therefore the applicants must be deemed to have waived any such objections and should not now be allowed to raise them in these proceedings.

In support of his argument Mr. Laycock relies on the decisions in *Broad* v. *Perkins* (21 Q.B.D., 533) and *Moore* v. *Gamgee* (25 Q.B.D., 244). Those were cases which had come before the County Court and in each of them the defendant had appeared and had raised no objection to the jurisdiction of the Court until after judgment had been given. It was held accordingly, in each case, that the defendant, having submitted to the jurisdiction, must be deemed to have waived his right to object. But in the present case I do not think it can properly be said that there was any submission on the part of the Applicants to the jurisdiction of the Board. On the contrary they appeared before the Board and objected to the declaration on the ground, *inter alia*, that the Board had exceeded its jurisdiction.

The question of waiver depends on intention, and in the present case I cannot find any sufficient indication of intention on the part of the Applicants to waive this particular objection. Having failed to sustain their objections before the Board they come to this Court, and I see no reason why they should be precluded here from raising an additional objection based on alleged noncompliance with the provisions of the Ordinance. The following observation of Neville, J. in *Bristol Corporation* v. *Sinnott* (117 L.T. at page 648) appears to me to be particularly appropriate to the position in the present case. The learned Judge said:—

> "It appears to me clear that, where a provision like this is put in for the protection of the public, a member of the public who has no desire to rely on the protection given has a perfect right to waive the giving of the notice altogether. I cannot conceive anything which should stand in the way of his so doing if there was evidence to show that he so wished. But I do not find in the present case any evidence upon which I could hold that there has been a waiver of the right to the notice. There was some hostility in the attitude of the owner in the present case from the first, and it appears to me that I should be finding contrary to the facts if I found that there was any intention of waiver on his part of any imperfection in the notice that was served upon him. He from the first, it seems to me, stood off. He of course negotiated with the corporation to see if mutual terms could not be arrived at satisfactory to both parties, but those negotiations fell through, and but for that I think he held the corporation at arm's length from first to last. That being so, it seems to me impossible to find that there was any waiver in the present case. To my mind the waiver depends upon intention, and one is very apt to confuse slightly the difference between waiver and estoppel. Waiver is the result of the intentional action of the person waiving."

Similarly in the present case I am not satisfied that the Applicants did anything which would amount to an indication of their intention to waive this objection, and I do not consider that they are precluded from raising it now.

An alternative argument was advanced by Mr. Smith, who represented the Applicants in Originating Summons 151 of 1934, namely, that the defect in the statement of grounds is an error appearing on the face of the proceedings and therefore it could not be waived. In support of this argument Mr. Smith cited *Farquharson* v. *Morgan* (1894, 1 Q.B., 552) and *Alderson* v. *Palliser* (1901, 2 K.B., 833). But I do not consider that the defect in the statement of grounds can properly be regarded as appearing on the face of the proceedings, and therefore I do not think that the two decisions cited by Mr. Smith apply here.

I have already, at an earlier stage of this Judgment, dealt with Mr. Laycock's point that if there is a defect in the statement of grounds it is as error of procedure only and therefore that prohibition will not lie to correct it.

My conclusion therefore on ground (a) of the Originating Summonses is that the Applicants are entitled to succeed on that ground also.

On both grounds (a) and (b), therefore, the Applicants are entitled, in my opinion, to writs of prohibition against the Improvement Trust.

The Trust must, of course, pay to the Applicants the costs of these proceedings.

Order Accordingly.

Solicitors for Estate & Trust Agencies (1927) Ltd.—*Sisson & Delay.*

Solicitors for H. D. Mundell—*Rodyk & Davidson.*

Solicitors for Eu Tong Sen Ltd.—*Donaldson & Burkinshaw.*

Solicitors for Singapore Improvement Trust—*Braddell Bros.*